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EXAMINER

ASTORINO, MICHAEL C

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 07/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/088,289	<b>Applicant(s)</b> SEO, YOUNG-DON	
	<b>Examiner</b> Michael Astorino	<b>Art Unit</b> 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The examiner acknowledges the remarks filed on March 29, 2004.
2. The examiner acknowledges the phone conversation conducted by the applicant's representative, however the examiner wishes to clarify a miscommunication. The examiner position was that if the priority date of September 16, 1999, was the effective date of the case, it would predate the provisional application of Holland US Patent Number 6,607,483 filed April 5, 2000, and the provisional application 60/158,553 filed October 8, 1999 of Mault US Patent Number 6,478,736. However, upon further review, the Korean Application 1999/39735 presently does not have a translation, therefore the references are still proper as intervening references. Due to this miscommunication, this rejection will be a non-final rejection. *(See below for further details.)*
3. Claims 1-17 are pending in the instant application.
4. The examiner withdraws the objection of the abstract being too long because the applicant has shortened the abstract.

### *Priority*

5. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Korea on 09/16/1999. It is noted, however, that applicant has not filed a certified copy of the 1999/39735 application as required by 35 U.S.C. 119(b).
6. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a translation of the foreign application should be submitted under 37 CFR 1.55 in reply to this action. See MPEP § 201.15.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 1-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Holland US

Patent Number 6,607,483 B1.

Note for applicant, the following rejection is based primarily on provisional application 60/194,819 filed April 5, 2000.

In regards to claim 1, Holland discloses a health management device (see abstract), comprising:

an input part for inputting basic data of a user (column 5, lines 25-67);

a control part for computing an ideal body weight, a body mass index and a waist/hip circumference ratio on the basis of the basic data, suggesting a prescription by computing an encouraged caloric intake per day, distribution of respective nutrients and an encouraged caloric consumption per day (column 1, lines 48-64);

a memory part for storing the input content of the input part, and software and data required for the processing to be performed by the control part (column 6, lines 11-14); and

an output part for outputting the basic data and a result of the processing performed by the control part (column 9, lines 1-37).

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In regards to claim 2, Holland discloses a health management device of claim 1, wherein the basic data including personal data including the distinction of sex (1008) and date of birth (1006), body data (1100), current clinical history and habits (1300 and 1400), the kind and amount of food taken by the user (1400, 1600, and 1700), and content and hour of activities undertaken by the user (1400 and 1700).

In regards to claim 3, Holland discloses a health management device of claim 1, wherein the control part suggests the prescription of the amount of one or more food each other and time of activities on the remaining intake calories and respective nutrients and consumption calories by analyzing the calories and respective nutrients already taken in and consumed by the user by a predetermined time point in a day when the user inputs desired food or activity contents ("CAMS and PAMS"; column 14, lines 10-60).

In regards to claim 4, Holland discloses wherein the body data includes past body data, current body data, desired body data, height, weight, waist size, hip size and a routine activity degree as factors for computing encouraged calories per day (column 13, lines 15-51, column 15, lines 43-67 and column 16, lines 1-5).

In regards to claim 5, Holland discloses in a health management device including an input part for inputting basic data, a control part for suggesting a prescription on the basis of the basic data, a memory part for storing the basic data and software required for the process to be performed by the control part, and an output part for outputting a result of the process performed by the control part, a health management method comprising the steps of:

storing the basic data input in the input part by a user (column 6, lines 11-14);

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providing functions of the health management device selected by the user (column 5, lines 25-67);

computing total calories taken in a day (column 9, lines 65-67 and column 10, lines 1-45);

performing a function for computing total calories consumed by activities in a day on the basis of the basic data (column 13, lines 54-67 and column 1-9);

performing a function for outputting a current body weight status on the basis of the basic data (column 15, lines 1-55);

performing a function for assessing a current body weight level with relation to a desired body weight or an ideal body weight or an ideal body weight respectively set by the user and assessing how much the current body weight reaches the desired body weight or the ideal body weight (column 1, lines 55-64);

estimating a body weight of the user after a predetermined time period on the basis of the caloric intake per day and the caloric consumption per day from a predetermined time point in the past to the present (column 15, lines 1-55); and

estimating a controllable body weight from the present to a desired period or a period to reach a desired body weight according to whether the user selects and inputs a desired period or a desired body weight (see column 13, line 14 through column 15, line 55).

In regards to claim 6, Holland discloses the health management method of claim 5, wherein the step for analyzing total calories consumed in a day comprises the sub-steps of: computing total calories consumed in a day on the basis of input activity contents, activity hours, and the current body weight by the control part; and

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outputting the computed total calories consumed in a day, remaining encouraged caloric consumption per day and a predictive total caloric consumption in a day by the control part (see column 13, line 14 through column 15, line 55).

In regards to claim 7, Holland discloses the health management method of claim 5, wherein the step of outputting a current body weight status on the basis of the basic data comprises the sub-steps of:

computing a body mass index and a waist / hip circumference ratio of the user by analyzing the basic data for outputting whether the current body weight of the user is normal or not;

assessing a lower body weight, a normal body weight, an overweight and obesity with the current body data, the body mass index, and the waist / hip circumference ratio; and suggesting a prescription (column 11, lines 10-55, column 12, lines 56-67, column 13, lines 1-51, columns 14-15, and column 16, lines 1-6).

In regards to claim 8, Holland discloses the health management method of claim 5, wherein the step of suggesting a prescription for the desired assessment comprises the sub-steps of;

outputting a prescription for a speed of body weight control, total caloric intake per day, encouragement or limitation of food intake, and encouraged activity names via the control part;

determining whether a current status of the user is underweight, normal body weight, overweight, or obesity by the control part and suggesting a way for controlling the body weight according to the determination by the control part (column 11, lines 10-55, column 12, lines 56-67, column 13, lines 1-51, columns 14-15, and column 16, lines 1-6).

In regards to claim 9, Holland discloses a health management method of claim 5, wherein a future body weight simulation step comprises the sub-steps of:

- selecting either designation of a desired value or not for estimating a change of body weight (1214);

- selecting either an estimation period or an estimation body weight (1220);

- determining whether to set a basis for estimating future body data with an estimation period or an estimation body weight (1220; column 13, lines 38-51);

- outputting a body weight estimation value after a predetermined period on the basis of either changes of caloric intake and consumption per day or a change of the body weight from a predetermined time point in the past to the present if the user inputs an estimation period for performing a first simulation step (columns 14-15);

- outputting a period to reach an estimation body weight on the basis of either changes of caloric intake and consumption per day or a change of the body weight from a predetermined time point in the past to the present if the user inputs an estimation body weight for performing a second simulation step (columns 14-15);

- selecting either a desired period or a desired body weight (1220);

- determining whether to set a basis for estimating a future body data with an estimation period or an estimation body weight (1220; column 13, lines 38-51);

- outputting a controllable body weight from the present in a desired period if the user inputs a desired period for performing a third simulation (columns 14-15); and

- outputting a period to reach an estimation body weight in the present state, if the user inputs a desired body weight for performing a fourth simulation step (columns 14-15).



2. Claims 10-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Mault US Patent Number 6,478,736.

Note for applicant, the following rejection is based primarily on provisional application 60/158,553 filed October 8, 1999, and secondarily on the remaining provisional applications that are before September 14, 2000.

In regards to claim 10, Mault discloses a health management device including an input part for inputting basic data, a control part for suggesting a prescription on the basis of the basic data, a memory part for storing the basic data and software and data required for the process to be performed by the control part, an output part for outputting a result of the process performed by the control part, a data conversion device and a data transmitting and receiving device using at least wire or wireless cable, health management system (see abstract) comprising:  
A network for transmitting data output from the health management device (70); and  
A database server (80) for storing the data transmitted via network and transmitting a prescription of a doctor suggested on the basis of the stored data to the health management device via the network (see columns 10, 11, 12, and 13).

In regards to claim 11, Mault discloses the health management system of claim 10, wherein the database server has functions for analyzing the basic data, assessing desired body data on the basis of the basic data, and storing the result of the analysis and the assessment to transfer a prescription of a doctor to the health management device (see columns 10, 11, 12, and 13).

In regards to claim 12, Mault discloses a health management device (see abstract) including an input part, a control part, a memory part, an output part a data conversion device and a data transmitting and receiving device, and having functions to analyze basic data and assess desired body data on the basis of the basic data and desired body data of a user for directly suggesting a prescription, to update the memory content according to the content of transmission of a database server, to transmit the analysis data, assessment data and the prescription performed by the health management device to the database server according to the requirement of the user, and to output a prescription of a doctor transmitted via the database server, a health management method comprising the steps of:

connecting the database server (80) to the health management device via a network (70);  
storing the analysis data of the basic data, the assessment data of the desired body data, and the prescription data of the health management device transmitted from the health management device (column 10, lines 22-37 and figures 6-12); and

transmitting a prescription of a doctor who inspects the analysis data of the basic data, the assessment data of the desired body data, and the prescription data of the health management device by the database server to the health management device, when suggesting the prescription or updating the memory content of the health management device (column 10, lines 37-67; see also columns 11, 12 and 13).

In regards to claim 13, Mault discloses a health management device (see abstract) including an input part, a control part, a memory part, an output part, a data conversion device and a data transmitting and receiving device for transmitting basic data and desired body data of

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a user and outputting a prescription of a doctor who reviews the data, a health management method of claim 12, comprising the steps of:

connecting the database server (80) to the health management device via a network (70); storing analysis data of the basic data and the desired body data transmitted from the health management device (column 10, lines 22-67); and

storing analysis and assessment of the basic data and the desired body data (figures 6-12) in the database server (80) for transmitting prescription data of a doctor who inspects the stored data to the health management device, when suggesting the prescription or updating the memory content of the health management device (columns 10, 11, 12 and 13).

In regards to claim 14, Mault discloses a health management device (see abstract) including an input part for inputting basic data, a control part for analyzing the basic data and assessing the desired body data, a memory part for storing the basic data and software and data required for the process to be performed by the control part, an output part for outputting a result of the process performed by the control part, and a data conversion device and a wireless transmitting and receiving device, a health management system (see abstract) comprising:

a base station for connecting to the health management device by using multi-connection communications techniques and protocol to wirelessly connect the health management device to a database server (figure 15, columns 10 and 11);

a base station control part for managing communications frequencies between the health management device and the base station for monitoring and controlling the base station (figure 15);

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the database server (80) for storing information on installation, management, repair, and connection attestation in the wireless communications connection with the health management device, and transmitting prescription data of a doctor according to the user's basic data to the health management device by being connected to the health management device via the base station (figure 15 and column 10, lines 22-67); and

a network switch for connecting the base station control part to the database server (figures 15; see also columns 10, 11, 12, and 13).

In regards to claim 15, Mault discloses further comprising the functions of analyzing and assessing the basic data and the desired body data on the basis of the basic data of the user and storing the result of the analysis and the assessment, wherein the prescription of a doctor is transmitted to the health management device (column 10, lines 22-67 and column 11, lines 1-67).

In regards to claim 16, Mault discloses a health management device (see abstract) including an input part, a control part, a memory part, an output part, a data conversion device and a data transmitting and receiving device, and having functions to analyze basic data and assess desired body data on the basis of the basic data and desired body data of a user for directly suggesting a prescription, to update the memory content according to the content of transmission of a database server, to transmit the analysis data, assessment data and the prescription performed by the health management device to the database server according to the requirements of the user, and to output a prescription of a doctor transmitted via the database server, a health management method comprising the steps of:

connecting the database server (80) to the health management device via a network (70);

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storing analysis data of the basic data, assessment data of the desired body data, and prescription data of the health management device transmitted from the health management device (figures 6-12 and 15, and column 10, lines 22-67;

inspecting the analysis data of the basic data, the assessment data of the desired body data, and the prescription data of the health management device in the database server for transmitting prescription data of a doctor or the memory content of the health management device to the health management device (columns 10 and 11); and

transmitting a prescription of a doctor who inspects the analysis data of the basic data, the assessment data of the desired body data, and the prescription data of the health management device to the health management device via the database server, a network switch, a base station control part and a base station, when suggesting the prescription or updating the memory content of the health management device (column 10, lines 22-67).

In regards to claim 17, Mault discloses in a health management device (see abstract) including an input part, a control part, a memory part, an output part, a data conversion device and a data transmitting and receiving device for transmitting basic data and desired body data of a user and outputting a prescription of a doctor who reviews the transmitted data, a health management method of claim 16, comprising the steps of:

wirelessly connecting the base station to the health management device by using multi-connection communications techniques and protocols (columns 10, 11, 12, 13 and figure 15);

storing the transmitted basic data and the desired body data in the database server (80);  
and

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performing analysis and assessment of the stored basic data and the desired body data by the database server (column 11), storing the analysis and assessment results performed by the database server, and transmitting prescription data of a doctor (82) who inspects the analysis and assessment results of the database server to the health management device via the database server, the network switch, the base station control part and the base station, when suggesting the prescription or updating the memory content of the health management device (figures 6-12 and columns 10, 11, 12, and 13).

### ***Response to Arguments***

9. Applicant's arguments filed 03/29/2004 have been fully considered but they are not persuasive. The applicant has recited that the foreign priority date is prior to the date of the references, however has not provided a translation in concert with MPEP § 201.15. This in part was due to a miscommunication between the applicant's attorney and the examiner, therefore this action will be a non-final action. As such, the previous art rejection(s) under 35 U.S.C. 102(e) stand.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mellinger ('197), Karkanen ('901), and Shea ('638).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Thursday, 10:00AM to 5:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mary Beth Jones can be reached on (703) 308-3400. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Michael Astorino", with a stylized flourish at the end.

Michael Astorino

July 9, 2004